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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,088	04/14/2006	Matthias Zoch	1703 1507US	6747
29894 7590 05/16/2008 DREISS, FUHLENDORF, STEIMLE & BECKER POSTFACH 10 37 62 D-70032 STUTTGART, GERMANY				
EXAMINER KIDWELL, MICHELE M				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
05/16/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/576,088

**Applicant(s)**

ZOOCH ET AL.

**Examiner**

Michele Kidwell

**Art Unit**

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11 – 23 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hamajima et al. (US 2001/0039406).

With reference to claims 11 – 12, 15 – 20 and 22 – 23 Hamajima et al. (hereinafter "Hamajima") discloses a disposable sanitary product comprising: a permeable top sheet (2), an impermeable bottom sheet (3), an storage (4) disposed therebetween having 5 to 30 weight % of hydrophilic melt-blown microfibers and 70 to 95 weight % of particulate superabsorbing material, wherein a mass per unit area of said melt-blown microfibers is 6 to 25 g/m<sup>2</sup> [0094], said melt-blown microfibers being connected to each other by a plurality of melt connections as set forth in col. 3, [0041] and col. 6, [0095]

The difference between Hamajima and claim 11 is the explicit teaching that the storage layer has a specific strength in a wet state, as measured in a machine direction, that is at least 40% of a strength thereof in a dry state.

The examiner contends that the article of Hamajima provides an article that is structurally identical to that claimed. In light of such, one can reasonably assume that Hamajima will function as claimed.

Further, the article of Hamajima will have strength in both a wet and dry state. The measured percentage may be considered relevant to the areas measured and/or the amount of wetness and/or dryness observed.

Likewise, the applicant is reminded that the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With reference to claims 13 – 14, the examiner contends that it would have been obvious to one of ordinary skill in the art to modify the claimed elements in order to determine the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

As to claim 21, Hamajima discloses a sanitary product further comprising a porous or fibrous layer disposed between said storage layer and said top sheet to rapidly absorb liquid as set forth on page 6, [0083].

Likewise, the examiner notes that it would have been obvious to one of ordinary skill in the art to provide such a layer as acquisition and/or distribution layers are well known in the art.

***Response to Arguments***

Applicant's arguments filed December 18, 2007 have been fully considered but they are not persuasive.

With respect to the applicant's arguments that Hamajima only touches on the claimed range and does not teach it with sufficient specificity, the examiner disagrees. The claimed range includes 30% and Hamajima discloses 30%. Therefore, while the applicant may consider this as touching on the range, the reference does in fact fall within the claimed range and, in turn, meets the claimed limitations.

Regarding the applicant's arguments that the fibers as relied on in [0095] are most likely staple fibers and not melt blown fibers, the examiner disagrees. [0095] specifically discloses the fibers as being meltblown.

With respect to the argument regarding the amount of superabsorbent. The examiner maintains the rejection because the claimed range includes 70% and Hamajima teaches 70% as set forth in the preceding rejection.

The claimed basis weight is taught in [0094] which was inadvertently omitted previously.

With respect to the claimed percentage, the examiner contends that the measured percentage is contingent upon the areas being measured and may be adjusted accordingly.

The applicant also argues the amount of connections present. While the term "few" is considered relative and any connection will meet the limitations as claimed, the examiner maintains that the article of Hamajima provides an article that is structurally

identical to that claimed. In light of such, one can reasonably assume that Hamajima will function as claimed.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/  
Primary Examiner, Art Unit 3761